IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4351 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI RAMANLAL MEHTA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR SJ DAVE, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/07/2000

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 8-8-1999 passed by the District Magistrate, Ahmedabad in exercise

of powers under Section 3(2)) of the PBMA Act, 1980 with a view to prevent the petitioner from black marketing essential commodities like kerosene (S.K.A.O.) and acting in any manner prejudicial to the maintenance of supplies of essential commodities like kerosene (S.K.A.O.) essential to the community.

2. Challenging the order of detention, it is contended by Mr.D.M.Thakkar, learned advocate for the petitioner, that though the authority has recorded the statements of various witnesses but same has not been taken into consideration while passing the order of detention and according to him, non-consideration of these statements at the time of passing the order of detention prejudiced the petitioner in making an effective representation. It is further contended by learned advocate for the petitioner that vide representation dated 17-5-2000, petitioner has demanded certain documents and same has been supplied to the petitioner, but these documents are absolutely illegible and hence, petitioner could not make an effective representation. He has further contended that the representation dated 17-5-2000 was also sent to Shri Kamalkishor, Economic Advisor, Govt. of India, Consumer Affairs Department, Room No.305, A-wing, Shastri Bhavan, New Delhi and also to Shri S. Nautiyal, Additional Secretary, Govt. of India, Consumer Affairs Department, Room No.270, Krushi Bhavan, New Delhi, but these representations have not been decided by the authorities till date.

3. I have gone through the order of detention and other relevant documents. It appears that though statements of various witnesses have been recorded by the authority, same have not been taken into consideration while passing the detention order. It further appears that though documents have been supplied to the petitioner in response to his representation, some of them are illegible and, therefore, the petitioner could not make an effective representation. Moreover, the respondents have not been able to satisfy this Court as to whether the representations which have been sent by the petitioner to the authorities stated above have been decided by the authority till date and hence, the petitioner's rights guaranteed under Article 22(5) of the Constitution of India are violated and, therefore, the order of detention is illegal and the same cannot be sustained.

4. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate,

Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

"Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, though the detenu has sent the representation on 17-5-2000 to the authorities stated above, the same has not been decided till date by those authorities of the Central Government and no explanation has been putforward by the authority explaining satisfactorily the delay caused in deciding the representation. In view of the above judgment of the Apex Court, the order of detention is required to be quashed and set aside.

6. In view of the above, the petition is allowed. The order of detention dated 8-8-1999 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Pravinbhai Ramanlal Mehta is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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